

ASSEMBLY BILL

No. 1063

Introduced by Assembly Member Garrick

February 27, 2009

An act to amend Sections 17250.25 and 81703 of the Education Code, and to amend Sections 20133, 20175.2, and 20209.8 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1063, as introduced, Garrick. Design-build contracts: labor compliance program: exemptions.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes school district governing boards, the governing boards of specified community college districts and community college facility construction projects, certain cities, certain counties, and transit operators, to enter into design-build contracts, as specified. Existing law provides that, for purposes of these provisions, the "safety record" of a bidder on these design-build contracts is deemed acceptable if it meets certain standards or if the bidder is party to an alternative dispute resolution system, as specified.

This bill would delete the provision that a bidder's "safety record" is deemed acceptable if the bidder is party to an alternative dispute resolution system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17250.25 of the Education Code is amended to read:

17250.25. Design-build projects shall progress as follows:

(a) (1) The school district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the school district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the school district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the school district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.

(iv) As an alternative to clause (iii), the governing board of a school district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

1 (v) If the school district governing board wishes to reserve the
2 right to hold discussions or negotiations with responsive bidders,
3 it shall so specify in the request for proposal and shall publish
4 separately or incorporate into the request for proposal applicable
5 rules and procedures to be observed by the school district to ensure
6 that any discussions or negotiations are conducted in a fair and
7 impartial manner.

8 (3) Notwithstanding Section 4-315 of Title 24 of the California
9 Code of Regulations, an architect or structural engineer who is
10 party to a design-build entity may perform the services set forth
11 in Section 17302.

12 (b) (1) The school district shall establish a procedure to
13 prequalify design-build entities using a standard questionnaire
14 developed by the Director of the Department of Industrial
15 Relations. In preparing the questionnaire, the director shall consult
16 with the construction industry, including representatives of the
17 building trades, surety industry, school districts, and other affected
18 parties. This questionnaire shall require information including, but
19 not limited to, all of the following:

20 (A) If the design-build entity is a partnership, limited
21 partnership, or other association, a listing of all of the partners,
22 general partners, or association members who will participate as
23 subcontractors in the design-build contract, including, but not
24 limited to, electrical and mechanical subcontractors.

25 (B) Evidence that the members of the design-build entity have
26 completed, or demonstrated, the experience, competency,
27 capability, and capacity to complete projects of similar size, scope
28 or complexity, and that proposed key personnel have sufficient
29 experience and training to competently manage and complete the
30 design and construction of the project.

31 (C) The licenses, registration, and credentials required to design
32 and construct the project, including information on the revocation
33 or suspension of any license, credential, or registration.

34 (D) Evidence that establishes that the design-build entity has
35 the capacity to obtain all required payment and performance
36 bonding, liability insurance, and errors and omissions insurance,
37 as well as a financial statement that assures the school district that
38 the design-build entity has the capacity to complete the project.

39 (E) Any prior serious or willful violation of the California
40 Occupational Safety and Health Act of 1973 (Part 1 (commencing

1 with Section 6300) of Division 5 of the Labor Code) or the Federal
2 Occupational Safety and Health Act of 1970 (P.L. 91-596), settled
3 against any member of the design-build entity, and information
4 concerning a contractor member's workers' compensation
5 experience history and worker safety program.

6 (F) Information concerning any debarment, disqualification, or
7 removal from a federal, state or local government public works
8 project.

9 (G) Any instance where an entity, its owners, officers, or
10 managing employees, submitted a bid on a public works project
11 and were found by an awarding body not to be a responsible bidder.

12 (H) Any instance where the entity, its owner, officers, or
13 managing employees defaulted on a construction contract.

14 (I) Any prior violations of the Contractors' State License Law
15 (Chapter 9 (commencing with Section 7000) of Division 3 of the
16 Business and Professions Code), excluding alleged violations of
17 federal or state law including the payment of wages, benefits,
18 apprenticeship requirements, or personal income tax withholding,
19 or of Federal Insurance Contribution Act (FICA) withholding
20 requirements, settled against any member of the design-build entity.

21 (J) Information concerning the bankruptcy or receivership of
22 any member of the entity, including information concerning any
23 work completed by a surety.

24 (K) Information concerning all settled adverse claims, disputes,
25 or lawsuits between the owner of a public works project and any
26 member of the design-build entity during the five-year period
27 preceding submission of the bid pursuant to this section, in which
28 the claim, settlement, or judgment exceeds fifty thousand dollars
29 (\$50,000). Information shall also be provided concerning any work
30 completed by a surety during this period.

31 (L) In the case of a partnership or other association that is not
32 a legal entity, a copy of the agreement creating the partnership or
33 association.

34 (2) The information required pursuant to this subdivision shall
35 be verified under oath by the design-build entity and its members
36 in the manner in which civil pleadings in civil actions are verified.
37 Information that is not a public record pursuant to the California
38 Public Records Act (Chapter 3.5 (commencing with Section 6250)
39 of Division 7 of Title I of the Government Code) shall not be open
40 to public inspection.

1 (c) The school district shall establish a procedure for final
2 selection of the design-build entity. Selection shall be based on
3 either of the following criteria:

4 (1) A competitive bidding process resulting in lump-sum bids
5 by the prequalified design-build entities. Award shall be made on
6 the basis of the lowest responsible bid.

7 (2) Notwithstanding any other provision of this code or of
8 Section 20110 of the Public Contract Code, a school district may
9 use a design-build competition based upon performance and other
10 criteria set forth by the governing board in the solicitation of
11 proposals. Criteria used in this evaluation of proposals may include,
12 but need not be limited to, the proposed design approach, life cycle
13 costs, project features, and project functions. However, competitive
14 proposals shall be evaluated by using the criteria and source
15 selection procedures specifically identified in the request for
16 proposal. Once the evaluation is complete, all responsive bidders
17 shall be ranked from the most advantageous to least advantageous
18 to the school district.

19 (A) Any architectural or engineering firm or individual retained
20 by the governing body of the school district to assist in the
21 development criteria or preparation of the request for proposal
22 shall not be eligible to participate in the competition with the
23 design-build entity.

24 (B) The award of the contract shall be made to the responsible
25 bidder whose proposal is determined, in writing by the school
26 district, to be the best value to the school district.

27 (C) Proposals shall be evaluated and scored solely on the basis
28 of the factors and source selection procedures identified in the
29 request for proposal. However, the following minimum factors
30 shall collectively represent at least 50 percent of the total weight
31 or consideration given to all criteria factors: price, technical
32 expertise, life cycle costs over 15 years or more, skilled labor force
33 availability, and acceptable safety record.

34 (D) The school district governing board shall issue a written
35 decision supporting its contract award and stating in detail the
36 basis of the award. The decision and the contract file must be
37 sufficient to satisfy an external audit.

38 (E) Notwithstanding any provision of the Public Contract Code,
39 upon issuance of a contract award, the school district governing
40 board shall publicly announce its awards identifying the contractor

1 to whom the award is made, the winning contractor's price proposal
2 and its overall combined rating on the request for proposal
3 evaluation factors. The notice of award shall also include the
4 agency's ranking in relation to all other responsive bidders and
5 their respective price proposals and a summary of the school
6 district's rationale for the contract award.

7 (F) For ~~the~~ purposes of this chapter, "skilled labor force
8 availability" means that an agreement exists with a registered
9 apprenticeship program, approved by the California Apprenticeship
10 Council, which has graduated apprentices in the preceding five
11 years. This graduation requirement shall not apply to programs
12 providing apprenticeship training for any craft that has not been
13 deemed by the Department of Labor and the Department of
14 Industrial Relations to be an ~~apprenticeable~~ *apprenticeable* craft in
15 the two years prior to enactment of this act.

16 (G) For ~~the~~ purposes of this chapter, a bidder's "safety record"
17 shall be deemed "acceptable" if its experience modification rate
18 for the most recent three-year period is an average of 1.00 or less,
19 and its average total recordable injury or illness rate and average
20 lost work rate for the most recent three-year period does not exceed
21 the applicable statistical standards for its business category; ~~or if~~
22 ~~the bidder is a party to an alternative dispute resolution system as~~
23 ~~provided for in Section 3201.5 of the Labor Code.~~

24 SEC. 2. Section 81703 of the Education Code is amended to
25 read:

26 81703. Design-build projects shall progress as follows:

27 (a) (1) The community college district governing board shall
28 prepare a request for proposal setting forth the scope of the project
29 that may include, but is not limited to, the size, type and desired
30 design character of the buildings and site, performance
31 specifications covering the quality of materials, equipment, and
32 workmanship, preliminary plans or building layouts, or any other
33 information deemed necessary to describe adequately the
34 community college district's needs. The performance specifications
35 and any plans shall be prepared by a design professional duly
36 licensed or registered in this state to perform the services required
37 by the Field Act, as defined in Section 17281.

38 (2) Each request for proposal shall do all of the following:

39 (A) Identify the basic scope and needs of the project or contract,
40 the expected cost range, and other information deemed necessary

1 by the community college district to inform interested parties of
2 the contracting opportunity.

3 (B) Invite interested parties to submit competitive sealed
4 proposals in the manner prescribed by the community college
5 district.

6 (C) Include a section identifying and describing the following:

7 (i) All significant factors and subfactors that the community
8 college district reasonably expects to consider in evaluating
9 proposals, including cost or price and all nonprice related factors
10 and subfactors.

11 (ii) The methodology and rating or weighting scheme that will
12 be used by the community college district governing board in
13 evaluating competitive proposals and specifically whether
14 proposals will be rated according to numeric or qualitative values.

15 (iii) The relative importance or weight assigned to each of the
16 factors identified in the request for proposal.

17 (iv) As an alternative to clause (iii), the governing board of a
18 community college district shall specifically disclose whether all
19 evaluation factors other than cost or price, when combined, are
20 any of the following:

21 (I) Significantly more important than cost or price.

22 (II) Approximately equal in importance to cost or price.

23 (III) Significantly less important than cost or price.

24 (v) If the community college district governing board wishes
25 to reserve the right to hold discussions or negotiations with
26 responsive bidders, it shall so specify in the request for proposal
27 and shall publish separately or incorporate into the request for
28 proposal applicable rules and procedures to be observed by the
29 community college district to ensure that any discussions or
30 negotiations are conducted in a fair and impartial manner.

31 (3) Notwithstanding Section 4-315 of Title 24 of the California
32 Code of Regulations, an architect or structural engineer who is
33 party to a design-build entity may perform the services set forth
34 in Section 81138.

35 (b) The community college district shall establish a procedure
36 to prequalify design-build entities using a standard questionnaire
37 developed by the Director of the Department of Industrial Relations
38 pursuant to subdivision (b) of Section 17250.25.

(c) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or

1 consideration given to all criteria factors: price, technical expertise,
2 life cycle costs over 15 years or more, skilled labor force
3 availability, and acceptable safety record.

4 (D) The community college district governing board shall issue
5 a written decision supporting its contract award and stating in detail
6 the basis of the award. The decision and the contract file must be
7 sufficient to satisfy an external audit.

8 (E) Notwithstanding any provision of the Public Contract Code,
9 upon issuance of a contract award, the community college district
10 governing board shall publicly announce its awards identifying
11 the contractor to whom the award is made, the winning contractor's
12 price proposal and its overall combined rating on the request for
13 proposal evaluation factors. The notice of award shall also include
14 the agency's ranking in relation to all other responsive bidders and
15 their respective price proposals and a summary of the community
16 college district's rationale for the contract award.

17 (F) For the purposes of this chapter, "skilled labor force
18 availability" means that an agreement exists with a registered
19 apprenticeship program, approved by the California Apprenticeship
20 Council, which has graduated apprentices in each of the
21 immediately preceding five years. This graduation requirement
22 shall not apply to programs providing apprenticeship training for
23 any craft that has not been deemed by the Department of Labor
24 and the Department of Industrial Relations to be an ~~apprenticeable~~
25 *apprenticeable* craft in the five years prior to enactment of the act
26 adding this section.

27 (G) For the purposes of this chapter, a bidder's "safety record"
28 shall be deemed "acceptable" if its experience modification rate
29 for the most recent three-year period is an average of 1.00 or less,
30 and its average total recordable injury or illness rate and average
31 lost work rate for the most recent three-year period does not exceed
32 the applicable statistical standards for its business category; ~~or if~~
33 ~~the bidder is a party to an alternative dispute resolution system as~~
34 ~~provided for in Section 3201.5 of the Labor Code.~~

35 (H) For the purposes of this chapter, when a community college
36 district determines a design-build entity's "experience," the district
37 shall give credit only to design-build experience and to California
38 school design and construction experience.

39 SEC. 3. Section 20133 of the Public Contract Code is amended
40 to read:

1 20133. (a) A county, with approval of the board of supervisors,
2 may utilize an alternative procedure for bidding on construction
3 projects in the county in excess of two million five hundred
4 thousand dollars (\$2,500,000) and may award the project using
5 either the lowest responsible bidder or by best value.

6 (b) (1) It is the intent of the Legislature to enable counties to
7 utilize design-build for buildings and county sanitation wastewater
8 treatment facilities. It is not the intent of the Legislature to
9 authorize this procedure for other infrastructure, including, but not
10 limited to, streets and highways, public rail transit, or water
11 resources facilities and infrastructures.

12 (2) The Legislature also finds and declares that utilizing a
13 design-build contract requires a clear understanding of the roles
14 and responsibilities of each participant in the design-build process.

15 (3) If the board of supervisors elects to proceed under this
16 section, the board of supervisors shall establish and enforce for
17 design-build projects a labor compliance program containing the
18 requirements outlined in Section 1771.5 of the Labor Code, or it
19 shall contract with a third party to operate a labor compliance
20 program containing the requirements outlined in Section 1771.5
21 of the Labor Code. This requirement shall not apply to any project
22 where if the county or the design-build entity has entered into any
23 collective bargaining agreement or agreements that bind all of the
24 contractors performing work on the projects.

25 (c) As used in this section:

26 (1) “Best value” means a value determined by objective criteria
27 related to price, features, functions, and life-cycle costs.

28 (2) “Design-build” means a procurement process in which both
29 the design and construction of a project are procured from a single
30 entity.

31 (3) “Design-build entity” means a partnership, corporation, or
32 other legal entity that is able to provide appropriately licensed
33 contracting, architectural, and engineering services as needed
34 pursuant to a design-build contract.

35 (4) “Project” means the construction of a building and
36 improvements directly related to the construction of a building,
37 and county sanitation wastewater treatment facilities, but does not
38 include the construction of other infrastructure, including, but not
39 limited to, streets and highways, public rail transit, or water
40 resources facilities and infrastructure.

1 (d) Design-build projects shall progress in a four-step process,
2 as follows:

3 (1) (A) The county shall prepare a set of documents setting
4 forth the scope of the project. The documents may include, but are
5 not limited to, the size, type, and desired design character of the
6 public improvement, performance specifications covering the
7 quality of materials, equipment, and workmanship, preliminary
8 plans or building layouts, or any other information deemed
9 necessary to describe adequately the county's needs. The
10 performance specifications and any plans shall be prepared by a
11 design professional who is duly licensed and registered in
12 California.

13 (B) Any architect or engineer retained by the county to assist
14 in the development of the project specific documents shall not be
15 eligible to participate in the preparation of a bid with any
16 design-build entity for that project.

17 (2) (A) Based on the documents prepared in paragraph (1), the
18 county shall prepare a request for proposals that invites interested
19 parties to submit competitive sealed proposals in the manner
20 prescribed by the county. The request for proposals shall include,
21 but is not limited to, the following elements:

22 (i) Identification of the basic scope and needs of the project or
23 contract, the expected cost range, and other information deemed
24 necessary by the county to inform interested parties of the
25 contracting opportunity, to include the methodology that will be
26 used by the county to evaluate proposals and specifically if the
27 contract will be awarded to the lowest responsible bidder.

28 (ii) Significant factors that the county reasonably expects to
29 consider in evaluating proposals, including cost or price and all
30 nonprice related factors.

31 (iii) The relative importance of weight assigned to each of the
32 factors identified in the request for proposals.

33 (B) With respect to clause (iii) of subparagraph (A), if a
34 nonweighted system is used, the agency shall specifically disclose
35 whether all evaluation factors other than cost or price when
36 combined are:

37 (i) Significantly more important than cost or price.

38 (ii) Approximately equal in importance to cost or price.

39 (iii) Significantly less important than cost or price.

1 (C) If the county chooses to reserve the right to hold discussions
2 or negotiations with responsive bidders, it shall so specify in the
3 request for proposal and shall publish separately or incorporate
4 into the request for proposal applicable rules and procedures to be
5 observed by the county to ensure that any discussions or
6 negotiations are conducted in good faith.

7 (3) (A) The county shall establish a procedure to prequalify
8 design-build entities using a standard questionnaire developed by
9 the county. In preparing the questionnaire, the county shall consult
10 with the construction industry, including representatives of the
11 building trades and surety industry. This questionnaire shall require
12 information including, but not limited to, all of the following:

13 (i) If the design-build entity is a partnership, limited partnership,
14 or other association, a listing of all of the partners, general partners,
15 or association members known at the time of bid submission who
16 will participate in the design-build contract, including, but not
17 limited to, mechanical subcontractors.

18 (ii) Evidence that the members of the design-build entity have
19 completed, or demonstrated the experience, competency, capability,
20 and capacity to complete; projects of similar size, scope, or
21 complexity, and that proposed key personnel have sufficient
22 experience and training to competently manage and complete the
23 design and construction of the project, as well as a financial
24 statement that assures the county that the design-build entity has
25 the capacity to complete the project.

26 (iii) The licenses, registration, and credentials required to design
27 and construct the project, including information on the revocation
28 or suspension of any license, credential, or registration.

29 (iv) Evidence that establishes that the design-build entity has
30 the capacity to obtain all required payment and performance
31 bonding, liability insurance, and errors and omissions insurance.

32 (v) Any prior serious or willful violation of the California
33 Occupational Safety and Health Act of 1973, contained in Part 1
34 (commencing with Section 6300) of Division 5 of the Labor Code,
35 or the federal Occupational Safety and Health Act of 1970 (P.L.
36 91-596), settled against any member of the design-build entity,
37 and information concerning workers' compensation experience
38 history and worker safety program.

39 (vi) Information concerning any debarment, disqualification,
40 or removal from a federal, state, or local government public works

1 project. Any instance in which an entity, its owners, officers, or
2 managing employees submitted a bid on a public works project
3 and were found to be nonresponsive, or were found by an awarding
4 body not to be a responsible bidder.

5 (vii) Any instance in which the entity, or its owners, officers,
6 or managing employees, defaulted on a construction contract.

7 (viii) Any violations of the Contractors' State License Law
8 (Chapter 9 (commencing with Section 7000) of Division 3 of the
9 Business and Professions Code), excluding alleged violations of
10 federal or state law including the payment of wages, benefits,
11 apprenticeship requirements, or personal income tax withholding,
12 or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.
13 3101 et seq.) withholding requirements settled against any member
14 of the design-build entity.

15 (ix) Information concerning the bankruptcy or receivership of
16 any member of the design-build entity, including information
17 concerning any work completed by a surety.

18 (x) Information concerning all settled adverse claims, disputes,
19 or lawsuits between the owner of a public works project and any
20 member of the design-build entity during the five years preceding
21 submission of a bid pursuant to this section, in which the claim,
22 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
23 Information shall also be provided concerning any work completed
24 by a surety during this period.

25 (xi) In the case of a partnership or other association, that is not
26 a legal entity, a copy of the agreement creating the partnership or
27 association and specifying that all partners or association members
28 agree to be fully liable for the performance under the design-build
29 contract.

30 (B) The information required pursuant to this subdivision shall
31 be verified under oath by the entity and its members in the manner
32 in which civil pleadings in civil actions are verified. Information
33 that is not a public record pursuant to the California Public Records
34 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
35 of Title 1 of the Government Code) shall not be open to public
36 inspection.

37 (4) The county shall establish a procedure for final selection of
38 the design-build entity. Selection shall be based on either of the
39 following criteria:

1 (A) A competitive bidding process resulting in lump-sum bids
2 by the prequalified design-build entities. Awards shall be made to
3 the lowest responsible bidder.

4 (B) A county may use a design-build competition based upon
5 best value and other criteria set forth in paragraph (2). The
6 design-build competition shall include the following elements:

7 (i) Competitive proposals shall be evaluated by using only the
8 criteria and selection procedures specifically identified in the
9 request for proposal. However, the following minimum factors
10 shall each represent at least 10 percent of the total weight of
11 consideration given to all criteria factors: price, technical design,
12 and construction expertise, life cycle costs over 15 years or more,
13 skilled labor force availability, and acceptable safety record.

14 (ii) Once the evaluation is complete, the top three responsive
15 bidders shall be ranked sequentially from the most advantageous
16 to the least.

17 (iii) The award of the contract shall be made to the responsible
18 bidder whose proposal is determined, in writing, to be the most
19 advantageous.

20 (iv) Notwithstanding any provision of this code, upon issuance
21 of a contract award, the county shall publicly announce its award,
22 identifying the contractor to whom the award is made, along with
23 a written decision supporting its contract award and stating the
24 basis of the award. The notice of award shall also include the
25 county's second and third ranked design-build entities.

26 (v) For ~~the~~ purposes of this paragraph, "skilled labor force
27 availability" shall be determined by the existence of an agreement
28 with a registered apprenticeship program, approved by the
29 California Apprenticeship Council, which has graduated
30 apprentices in each of the preceding five years. This graduation
31 requirement shall not apply to programs providing apprenticeship
32 training for any craft that has been deemed by the Department of
33 Labor and the Department of Industrial Relations to be an
34 apprenticeable craft in the five years prior to enactment of this act.

35 (vi) For ~~the~~ purposes of this paragraph, a bidder's "safety
36 record" shall be deemed "acceptable" if their experience
37 modification rate for the most recent three-year period is an average
38 of 1.00 or less, and their average total recordable injury/illness
39 rate and average lost work rate for the most recent three-year period
40 does not exceed the applicable statistical standards for its business

1 ~~category or if the bidder is a party to an alternative dispute~~
2 ~~resolution system as provided for in Section 3201.5 of the Labor~~
3 ~~Code.~~

4 (e) (1) Any design-build entity that is selected to design and
5 build a project pursuant to this section shall possess or obtain
6 sufficient bonding to cover the contract amount for nondesign
7 services, and errors and omission insurance coverage sufficient to
8 cover all design and architectural services provided in the contract.
9 This section does not prohibit a general or engineering contractor
10 from being designated the lead entity on a design-build entity for
11 the purposes of purchasing necessary bonding to cover the activities
12 of the design-build entity.

13 (2) Any payment or performance bond written for the purposes
14 of this section shall be written using a bond form developed by
15 the county.

16 (f) All subcontractors that were not listed by the design-build
17 entity in accordance with clause (i) of subparagraph (A) of
18 paragraph (3) of subdivision (d) shall be awarded by the
19 design-build entity in accordance with the design-build process
20 set forth by the county in the design-build package. All
21 subcontractors bidding on contracts pursuant to this section shall
22 be afforded the protections contained in Chapter 4 (commencing
23 with Section 4100) of Part 1. The design-build entity shall do both
24 of the following:

25 (1) Provide public notice of the availability of work to be
26 subcontracted in accordance with the publication requirements
27 applicable to the competitive bidding process of the county.

28 (2) Provide a fixed date and time on which the subcontracted
29 work will be awarded in accordance with the procedure established
30 pursuant to this section.

31 (g) The minimum performance criteria and design standards
32 established pursuant to paragraph (1) of subdivision (d) shall be
33 adhered to by the design-build entity. Any deviations from those
34 standards may only be allowed by written consent of the county.

35 (h) The county may retain the services of a design professional
36 or construction project manager, or both, throughout the course of
37 the project in order to ensure compliance with this section.

38 (i) Contracts awarded pursuant to this section shall be valid until
39 the project is completed.

1 (j) Nothing in this section is intended to affect, expand, alter,
2 or limit any rights or remedies otherwise available at law.

3 (k) (1) If the county elects to award a project pursuant to this
4 section, retention proceeds withheld by the county from the
5 design-build entity shall not exceed 5 percent if a performance and
6 payment bond, issued by an admitted surety insurer, is required in
7 the solicitation of bids.

8 (2) In a contract between the design-build entity and the
9 subcontractor, and in a contract between a subcontractor and any
10 subcontractor thereunder, the percentage of the retention proceeds
11 withheld may not exceed the percentage specified in the contract
12 between the county and the design-build entity. If the design-build
13 entity provides written notice to any subcontractor who is not a
14 member of the design-build entity, prior to or at the time the bid
15 is requested, that a bond may be required and the subcontractor
16 subsequently is unable or refuses to furnish a bond to the
17 design-build entity, then the design-build entity may withhold
18 retention proceeds in excess of the percentage specified in the
19 contract between the county and the design-build entity from any
20 payment made by the design-build entity to the subcontractor.

21 (l) Each county that elects to proceed under this section and
22 uses the design-build method on a public works project shall submit
23 to the Legislative Analyst's Office before December 1, 2009, a
24 report containing a description of each public works project
25 procured through the design-build process and completed after
26 November 1, 2004, and before November 1, 2009. The report shall
27 include, but shall not be limited to, all of the following information:

28 (1) The type of project.

29 (2) The gross square footage of the project.

30 (3) The design-build entity that was awarded the project.

31 (4) The estimated and actual length of time to complete the
32 project.

33 (5) The estimated and actual project costs.

34 (6) A description of any written protests concerning any aspect
35 of the solicitation, bid, proposal, or award of the design-build
36 project, including the resolution of the protests.

37 (7) An assessment of the prequalification process and criteria.

38 (8) An assessment of the effect of retaining 5-percent retention
39 on the project.

1 (9) A description of the Labor Force Compliance Program and
2 an assessment of the project impact, where required.

3 (10) A description of the method used to award the contract. If
4 best value was the method, the report shall describe the factors
5 used to evaluate the bid, including the weighting of each factor
6 and an assessment of the effectiveness of the methodology.

7 (11) An assessment of the project impact of “skilled labor force
8 availability.”

9 (12) An assessment of the design-build dollar limits on county
10 projects. This assessment shall include projects where the county
11 wanted to use design-build and was precluded by the dollar
12 limitation. This assessment shall also include projects where the
13 best value method was not used due to dollar limitations.

14 (13) An assessment of the most appropriate uses for the
15 design-build approach.

16 (m) Any county that elects to not use the authority granted by
17 this section may submit a report to the Legislative Analyst’s Office
18 explaining why the county elected to not use the design-build
19 method.

20 (n) On or before January 1, 2010, the Legislative Analyst shall
21 report to the Legislature on the use of the design-build method by
22 counties pursuant to this section, including the information listed
23 in subdivision (l). The report may include recommendations for
24 modifying or extending this section.

25 (o) Except as provided in this section, nothing in this act shall
26 be construed to affect the application of any other law.

27 (p) This section shall remain in effect only until January 1, 2011,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2011, deletes or extends that date.

30 SEC. 4. Section 20175.2 of the Public Contract Code is
31 amended to read:

32 20175.2. (a) (1) A city, with approval of the appropriate city
33 council, may utilize an alternative procedure for bidding on
34 building construction projects in the city in excess of one million
35 dollars (\$1,000,000), except as provided in subdivision (p).

36 (2) Cities may award the project using either the lowest
37 responsible bidder or by best value.

38 (b) (1) It is the intent of the Legislature to enable cities to utilize
39 cost-effective options for building and modernizing public
40 facilities. The Legislature also recognizes the national trend,

1 including authorization in California, to allow public entities to
2 utilize design-build contracts as a project delivery method. It is
3 not the intent of the Legislature to authorize this procedure for
4 transportation facilities, including, but not limited to, roads and
5 bridges.

6 (2) The Legislature also finds and declares that utilizing a
7 design-build contract requires a clear understanding of the roles
8 and responsibilities of each participant in the design-build process.
9 The Legislature also finds that the cost-effective benefits to cities
10 are achieved by shifting the liability and risk for cost containment
11 and project completion to the design-build entity.

12 (3) It is the intent of the Legislature to provide an alternative
13 and optional procedure for bidding and building construction
14 projects for cities.

15 (4) The design-build approach may be used, but is not limited
16 to use, when it is anticipated that it will: reduce project cost,
17 expedite project completion, or provide design features not
18 achievable through the design-bid-build method.

19 (5) If a city council elects to proceed under this section, the city
20 council shall establish and enforce, for design-build projects, a
21 labor compliance program containing the requirements outlined
22 in Section 1771.5 of the Labor Code, or it shall contract with a
23 third party to operate a labor compliance program containing the
24 requirements outlined in Section 1771.5 of the Labor Code. This
25 requirement shall not apply to any project where the city or the
26 design-build entity has entered into any collective bargaining
27 agreement or agreements that bind all of the contractors performing
28 work on the projects.

29 (c) As used in this section:

30 (1) “Best value” means a value determined by objectives relative
31 to price, features, functions, and life-cycle costs.

32 (2) “Design-build” means a procurement process in which both
33 the design and construction of a project are procured from a single
34 entity.

35 (3) “Design-build entity” means a partnership, corporation, or
36 other legal entity that is able to provide appropriately licensed
37 contracting, architectural, and engineering services, as needed,
38 pursuant to a design-build contract.

39 (4) “Project” means the construction of a building and
40 improvements directly related to the construction of a building,

1 but does not include streets and highways, public rail transit, or
2 water resource facilities and infrastructure.

3 (d) Design-build projects shall progress in a four-step process,
4 as follows:

5 (1) (A) The city shall prepare a set of documents setting forth
6 the scope of the project. The documents may include, but are not
7 limited to, the size, type, and desired design character of the
8 buildings and site, performance specifications covering the quality
9 of materials, equipment, and workmanship, preliminary plans or
10 building layouts, or any other information deemed necessary to
11 describe adequately the city's needs. The performance
12 specifications and any plans shall be prepared by a design
13 professional who is duly licensed and registered in California.

14 (B) Any architect or engineer retained by the city to assist in
15 the development of the project-specific documents shall not be
16 eligible to participate in the preparation of a bid with any
17 design-build entity for that project.

18 (2) (A) Based on the documents prepared in paragraph (1), the
19 city shall prepare a request for proposals that invites interested
20 parties to submit competitive sealed proposals in the manner
21 prescribed by the city. The request for proposals shall include, but
22 is not limited to, the following elements:

23 (i) Identification of the basic scope and needs of the project or
24 contract, the expected cost range, and other information deemed
25 necessary by the city to inform interested parties of the contracting
26 opportunity, to include the methodology that will be used by the
27 city to evaluate proposals, and specifically if the contract will be
28 awarded to the lowest responsible bidder.

29 (ii) Significant factors which the city reasonably expects to
30 consider in evaluating proposals, including cost or price and all
31 nonprice related factors.

32 (iii) The relative importance of weight assigned to each of the
33 factors identified in the request for proposals.

34 (B) With respect to clause (iii) of subparagraph (A), if a
35 nonweighted system is used, the agency shall specifically disclose
36 whether all evaluation factors, other than cost or price, when
37 combined are:

38 (i) Significantly more important than cost or price.

39 (ii) Approximately equal in importance to cost or price.

40 (iii) Significantly less important than cost or price.

1 (C) If the city chooses to reserve the right to hold discussions
2 or negotiations with responsive bidders, it shall so specify in the
3 request for proposal and shall publish separately, or incorporate
4 into the request for proposal, applicable rules and procedures to
5 be observed by the city to ensure that any discussions or
6 negotiations are conducted in good faith.

7 (3) (A) The city shall establish a procedure to prequalify
8 design-build entities using a standard questionnaire developed by
9 the city. In preparing the questionnaire, the city shall consult with
10 the construction industry, including representatives of the building
11 trades and surety industry. This questionnaire shall require
12 information including, but not limited to, all of the following:

13 (i) If the design-build entity is a partnership, limited partnership,
14 or other association, a listing of all of the partners, general partners,
15 or association members known at the time of bid submission who
16 will participate in the design-build contract, including, but not
17 limited to, mechanical subcontractors.

18 (ii) Evidence that the members of the design-build entity have
19 completed, or demonstrated the experience, competency, capability,
20 and capacity to complete projects of similar size, scope, or
21 complexity, and that proposed key personnel have sufficient
22 experience and training to competently manage and complete the
23 design and construction of the project, as well as a financial
24 statement that assures the city that the design-build entity has the
25 capacity to complete the project.

26 (iii) The licenses, registration, and credentials required to design
27 and construct the project, including information on the revocation
28 or suspension of any license, credential, or registration.

29 (iv) Evidence that establishes that the design-build entity has
30 the capacity to obtain all required payment and performance
31 bonding, liability insurance, and errors and omissions insurance.

32 (v) Any prior serious or willful violation of the California
33 Occupational Safety and Health Act of 1973, contained in Part 1
34 (commencing with Section 6300) of Division 5 of the Labor Code
35 or the federal Occupational Safety and Health Act of 1970 (Public
36 Law 91-596) settled against any member of the design-build entity,
37 and information concerning workers' compensation experience
38 history and worker safety program.

39 (vi) Information concerning any debarment, disqualification,
40 or removal from a federal, state, or local government public works

1 project. Any instance where an entity, its owners, officers, or
2 managing employees submitted a bid on a public works project
3 and were found to be nonresponsive, or were found by an awarding
4 body not to be a responsible bidder.

5 (vii) Any instance where the entity, its owners, officers, or
6 managing employees defaulted on a construction contract.

7 (viii) Any violations of the Contractors' State License Law
8 (Chapter 9 (commencing with Section 7000) of Division 3 of the
9 Business and Professions Code), excluding alleged violations of
10 federal or state law including the payment of wages, benefits,
11 apprenticeship requirements, or personal income tax withholding,
12 or of Federal Insurance Contribution Act (FICA) withholding
13 requirements settled against any member of the design-build entity.

14 (ix) Information concerning the bankruptcy or receivership of
15 any member of the design-build entity, including information
16 concerning any work completed by a surety.

17 (x) Information concerning all settled adverse claims, disputes,
18 or lawsuits between the owner of a public works project and any
19 member of the design-build entity during the five years preceding
20 submission of a bid pursuant to this section, in which the claim,
21 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
22 Information shall also be provided concerning any work completed
23 by a surety during this period.

24 (xi) In the case of a partnership or other association that is not
25 a legal entity, a copy of the agreement creating the partnership or
26 association and specifying that all partners or association members
27 agree to be fully liable for the performance under the design-build
28 contract.

29 (B) The information required pursuant to this subdivision shall
30 be verified under oath by the entity and its members in the manner
31 in which civil pleadings in civil actions are verified. Information
32 that is not a public record pursuant to the California Public Records
33 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
34 of Title 1 of the Government Code) shall not be open to public
35 inspection.

36 (4) The city shall establish a procedure for final selection of the
37 design-build entity. Selection shall be based on either of the
38 following criteria:

1 (A) A competitive bidding process resulting in lump-sum bids
2 by the prequalified design-build entities. Awards shall be made to
3 the lowest responsible bidder.

4 (B) The city may use a design-build competition based upon
5 best value and other criteria set forth in paragraph (2) of
6 subdivision (d). The design-build competition shall include the
7 following elements:

8 (i) Competitive proposals shall be evaluated by using only the
9 criteria and selection procedures specifically identified in the
10 request for proposal. However, the following minimum factors
11 shall each represent at least 10 percent of the total weight of
12 consideration given to all criteria factors: price, technical design
13 and construction expertise, life-cycle costs over 15 years or more,
14 skilled labor force availability, and acceptable safety record. Each
15 of these factors shall be weighted equally.

16 (ii) Once the evaluation is complete, the top three responsive
17 bidders shall be ranked sequentially from the most advantageous
18 to the least.

19 (iii) The award of the contract shall be made to the responsible
20 bidder whose proposal is determined, in writing, to be the most
21 advantageous.

22 (iv) Notwithstanding any provision of this code, upon issuance
23 of a contract award, the city shall publicly announce its award,
24 identifying the contractor to whom the award is made, along with
25 a written decision supporting its contract award and stating the
26 basis of the award. The notice of award shall also include the city's
27 second and third ranked design-build entities.

28 (v) For the purposes of this paragraph, "skilled labor force
29 availability" shall be determined by the existence of an agreement
30 with a registered apprenticeship program, approved by the
31 California Apprenticeship Council, which has graduated
32 apprentices in each of the preceding five years. This graduation
33 requirement shall not apply to programs providing apprenticeship
34 training for any craft that has been deemed by the Department of
35 Labor and the Department of Industrial Relations to be an
36 apprenticeable craft in the five years prior to enactment of this act.

37 (vi) For the purposes of this paragraph, a bidder's "safety
38 record" shall be deemed "acceptable" if their experience
39 modification rate for the most recent three-year period is an average
40 of 1.00 or less, and their average total recordable injury/illness

1 rate and average lost work rate for the most recent three-year period
2 does not exceed the applicable statistical standards for its business
3 category, ~~or if the bidder is a party to an alternative dispute~~
4 ~~resolution system, as provided for in Section 3201.5 of the Labor~~
5 ~~Code.~~

6 (e) (1) Any design-build entity that is selected to design and
7 build a project pursuant to this section shall possess or obtain
8 sufficient bonding to cover the contract amount for nondesign
9 services and errors and omissions insurance coverage sufficient
10 to cover all design and architectural services provided in the
11 contract. This section does not prohibit a general or engineering
12 contractor from being designated the lead entity on a design-build
13 entity for the purposes of purchasing necessary bonding to cover
14 the activities of the design-build entity.

15 (2) Any payment or performance bond written for the purposes
16 of this section shall be written using a bond form developed by
17 the city.

18 (f) All subcontractors that were not listed by the design-build
19 entity in accordance with clause (i) of subparagraph (A) of
20 paragraph (3) of subdivision (d) shall be awarded by the
21 design-build entity in accordance with the design-build process
22 set forth by the city in the design-build package. All subcontractors
23 bidding on contracts pursuant to this section shall be afforded the
24 protections contained in Chapter 4 (commencing with Section
25 4100) of Part 1. The design-build entity shall do both of the
26 following:

27 (1) Provide public notice of the availability of work to be
28 subcontracted in accordance with the publication requirements
29 applicable to the competitive bidding process of the city.

30 (2) Provide a fixed date and time on which the subcontracted
31 work will be awarded in accordance with the procedure established
32 pursuant to this section.

33 (g) The minimum performance criteria and design standards
34 established pursuant to paragraph (1) of subdivision (d) shall be
35 adhered to by the design-build entity. Any deviations from those
36 standards may only be allowed by written consent of the city.

37 (h) The city may retain the services of a design professional or
38 construction project manager, or both, throughout the course of
39 the project in order to ensure compliance with this section.

1 (i) Contracts awarded pursuant to this section shall be valid until
2 the project is completed.

3 (j) Nothing in this section is intended to affect, expand, alter,
4 or limit any rights or remedies otherwise available at law.

5 (k) (1) If the city elects to award a project pursuant to this
6 section, retention proceeds withheld by the city from the
7 design-build entity shall not exceed 5 percent if a performance and
8 payment bond, issued by an admitted surety insurer, is required in
9 the solicitation of bids.

10 (2) In a contract between the design-build entity and the
11 subcontractor, and in a contract between a subcontractor and any
12 subcontractor thereunder, the percentage of the retention proceeds
13 withheld ~~may~~ shall not exceed the percentage specified in the
14 contract between the city and the design-build entity. If the
15 design-build entity provides written notice to any subcontractor
16 who is not a member of the design-build entity, prior to or at the
17 time the bid is requested, that a bond may be required and the
18 subcontractor subsequently is unable or refuses to furnish a bond
19 to the design-build entity, then the design-build entity may withhold
20 retention proceeds in excess of the percentage specified in the
21 contract between the city and the design-build entity from any
22 payment made by the design-build entity to the subcontractor.

23 (l) Each city that elects to proceed under this section and uses
24 the design-build method on a public works project shall submit to
25 the Legislative Analyst's Office before December 1, 2014, a report
26 containing a description of each public works project procured
27 through the design-build process that is completed after January
28 1, 2011, and before November 1, 2014. The report shall include,
29 but shall not be limited to, all of the following information:

30 (1) The type of project.

31 (2) The gross square footage of the project.

32 (3) The design-build entity that was awarded the project.

33 (4) The estimated and actual project costs.

34 (5) A description of any written protests concerning any aspect
35 of the solicitation, bid, proposal, or award of the design-build
36 project, including the resolution of the protests.

37 (6) An assessment of the prequalification process and criteria.

38 (7) An assessment of the effect of retaining 5 percent retention
39 on the project.

1 (8) A description of the Labor Force Compliance Program and
2 an assessment of the project impact, where required.

3 (9) A description of the method used to award the contract. If
4 the best value method was used, the report shall describe the factors
5 used to evaluate the bid, including the weighting of each factor
6 and an assessment of the effectiveness of the methodology.

7 (10) An assessment of the project impact of “skilled labor force
8 availability.”

9 (11) An assessment of the most appropriate uses for the
10 design-build approach.

11 (m) Any city that elects not to use the authority granted by this
12 section may submit a report to the Legislative Analyst’s Office
13 explaining why the city elected not to use the design-build method.

14 (n) On or before January 1, 2015, the Legislative Analyst’s
15 Office shall report to the Legislature on the use of the design-build
16 method by cities pursuant to this section, including the information
17 listed in subdivision (l). The report may include recommendations
18 for modifying or extending this section.

19 (o) Except as provided in this section, nothing in this act shall
20 be construed to affect the application of any other law.

21 (p) Before January 1, 2011, the project limitation of one million
22 dollars (\$1,000,000), as set forth in subdivision (a), shall not apply
23 to any city in the Counties of Solano and Yolo, or to the Cities of
24 Stanton and Victorville.

25 (q) This section shall remain in effect only until January 1, 2016,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2016, deletes or extends that date.

28 SEC. 5. Section 20209.8 of the Public Contract Code is
29 amended to read:

30 20209.8. Criteria used in the evaluation of proposals may
31 include, but need not be limited to, the proposed design approach,
32 life-cycle costs, project features, and project functions.

33 (a) Competitive proposals shall be evaluated by using only the
34 criteria and source selection procedures specifically identified in
35 the RFP. Once the evaluation is complete, all responsive bidders
36 shall be ranked from most advantageous to least advantageous to
37 the awarding agency.

38 (b) Any architectural or engineering firm or individual retained
39 by the governing body to assist in the development criteria or

1 preparation of the solicitation shall not be eligible to participate
2 in the competition with any design-build entity.

3 (c) The award of the contract shall be made to the responsible
4 bidder whose proposals are determined, in writing, to be the best
5 value to the awarding body.

6 (d) Proposals shall be evaluated and scored solely on the basis
7 of the factors and source selection procedures identified in the
8 RFPs. However, the following minimum factors shall collectively
9 represent at least 50 percent of the total weight or consideration
10 given to all criteria factors: price, technical expertise, life cycle
11 costs over 15 years or more, skilled labor force availability, and
12 acceptable safety record.

13 (e) The contracting agency shall issue a written decision
14 supporting its contract award and stating in detail the basis of the
15 award. The decision and the contract file shall be sufficient to
16 satisfy an external audit.

17 (f) Notwithstanding any provision of the Public Contract Code,
18 upon issuance of a contract award, the contracting agency shall
19 publicly announce its award, identifying the contractor to whom
20 the award is made, the winning contractor's price proposal, and
21 its overall combined rating on the RFP evaluation factors. The
22 notice of award shall also include the agency's ranking of all other
23 offerors and their respective price proposals and a summary of the
24 agency's rationale for the contract award.

25 (g) For~~the~~ purposes of this section, "skilled labor force
26 availability" shall be determined by the existence of an agreement
27 with a registered apprenticeship program, approved by the
28 California Apprenticeship Council, which has graduated
29 apprentices in each of the preceding five years. This graduation
30 requirement shall not apply to programs providing apprenticeship
31 training for any craft that has not been deemed by the Department
32 of Labor and the Department of Industrial Relations to be an
33 apprenticeable craft in the five years prior to enactment of this act.

34 (h) For~~the~~ purposes of this section, a bidder's "safety record"
35 shall be deemed "acceptable" if his or her experience modification
36 rate for the most recent three-year period is an average of 1.0 or
37 less and his or her average total recordable injury/illness rate and
38 average lost work rate for the most recent three-year period does
39 not exceed the applicable statistical standards for its business
40 category ~~or if the bidder is a party to an alternative dispute~~

1 ~~resolution system as provided for in Section 3201.5 of the Labor~~
2 ~~Code.~~

O